

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Authorize Release of Maintenance Agreement and Irrevocable Letter of Credit for Chuluota Veterinary Hospital - Road Improvements

DEPARTMENT: Planning and Development **DIVISION:** Development Review

AUTHORIZED BY: Dori DeBord

CONTACT: Jim Potter

EXT: 7323

MOTION/RECOMMENDATION:

Authorize the release of the Chuluota Veterinary Hospital Maintenance Agreement and Irrevocable Letter of Credit #114 in the amount of \$2,822.53 for the Chuluota Veterinary Hospital road improvements.

District 1 Bob Dallari

Jim Potter

BACKGROUND:

The Maintenance Agreement and Irrevocable Letter of Credit #114 for \$2,822.53 (BankFIRST) were required by Section 35.44 (e) *Additional Required Legal Submittals* (1) *Bonds* of the Seminole County Land Development Code to insure operating conditions have not significantly degraded as a result of the work covered by the Chuluota Veterinary Hospital Maintenance Agreement and Irrevocable Letter of Credit. A two year maintenance inspection was conducted by staff for this project and it was determined to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends the Board authorize the release of the Chuluota Veterinary Hospital Maintenance Agreement and Irrevocable Letter of Credit #114 in the amount of \$2,822.53 for the Chuluota Veterinary Hospital road improvements.

ATTACHMENTS:

1. Maintenance Agreement - Chuluota Veterinary Hospital
2. Irrevocable Letter of Credit

Additionally Reviewed By:

☒ County Attorney Review (Kathleen Furey-Tran)

SUBDIVISION AND SITE PLAN

MAINTENANCE AGREEMENT (Road Improvements)

THIS AGREEMENT, is made and entered into this day of October 21, 2005, between Dr. Jon Zern and Chuluota Veterinary Hospital, Inc., hereinafter referred to as "PRINCIPAL," and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, PRINCIPAL, has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as TOWNSITE OF NORTH CHULUOTA, a Plat of which is recorded in Plat Book 2, pages 54-58 of the Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated _____ (as subsequently revised or amended) and filed with the County Engineer of Seminole County; and

WHEREAS, PRINCIPAL is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said road improvements and to maintain said road improvements for a period of two (2) years from October 21, 2005; and

WHEREAS, to guarantee performance of said obligations by PRINCIPAL, PRINCIPAL, has obtained and furnished to the COUNTY, a certain Irrevocable Letter of Credit No. 114 issued by BANKFIRST, in the sum of **Two Thousand Eight Hundred and Twenty Two and 53/100 DOLLARS (\$2,822.53)**.

NOW THEREFORE, the COUNTY agrees to accept the road improvements into the County Road System upon execution of this Agreement and to accept an Irrevocable Letter of Credit as security for the maintenance obligation of the PRINCIPAL.

PRINCIPAL, its heirs, executors, successors and assigns, jointly and severally agree to be held and firmly bound to the COUNTY in the sum of **Two Thousand Eight Hundred and Twenty Two and 53/100 DOLLARS (\$2,822.53)** on the condition that, if PRINCIPAL shall promptly and faithfully protect the COUNTY against any defects resulting from faulty materials or workmanship of the aforesaid road improvements and maintain said road improvements for a period of two (2) years from October 21, 2005, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

Should the PRINCIPAL fail or refuse to perform or correct said defects within the time specified, the COUNTY shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost thereof, including, but not limited to, engineering, legal and contingent costs. Further, the COUNTY, in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the PRINCIPAL, both at law and in equity, including specifically, **specific performance**, to which the PRINCIPAL unconditionally agrees.

The PRINCIPAL further agrees that the COUNTY, at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, cause to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and, in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

Signed, Sealed and delivered in the presence of:

Tobatha Thompson
Karen M. Hough

By:

[Signature], DWM

Date:

12/14/05

WITNESSES:

Tobatha Thompson
Karen M. Hough

DEPARTMENT OF PUBLIC WORKS
ROAD OPERATIONS/STORMWATER DIVISION
SEMINOLE COUNTY, FLORIDA

[Signature]

**Michael K Arnold, Manager
Roads-Stormwater Division**

Date:

Within authority delegated by the County Manager pursuant to Resolution No. 97-R-66 adopted March 11, 1997 and further delegated by Memorandum dated March 27, 1997, Re: Streamlining of Development-Related Agenda Items and approved on April 2, 1997.

STATE OF Florida)
) SS
COUNTY OF Seminole)

The foregoing instrument was acknowledged before me this 14 day of Dec, 2005, by Jon Zern, who is personally known to me or who has produced as identification.

NOTARY PUBLIC-STATE OF FLORIDA
Melinda Chisolm
Commission #DD362877
Expires: OCT. 14, 2008
Bonded Thru Atlantic Bonding Co., Inc.

[Signature]
Signature of Notary Public in and for the County and State Aforementioned

Print Name Melinda Chisolm

My Commission Expires: 10/14/08

(App E, LDC, through Supp 16)

IRREVOCABLE LETTER OF CREDIT
(For Maintenance Agreement – Road Improvements)

BankFIRST
1031 W. Morse Blvd.
Winter Park, FL 32789
November 23, 2005

Seminole County Board of County Commissioners
Seminole County Services Building
1101 East First Street
Sanford, FL 32771

Re: Irrevocable Letter of Credit No. 114

Dear Commissioners:

By order of Dr. Jon Zern and Chuluota Veterinary Hospital, we hereby establish an Irrevocable Letter of Credit in your favor. We hereby authorize you to draw on BankFIRST up to an aggregate amount of \$2,822.53 available by your drafts at sight accompanied by a signed statement of the Board of County Commissioners that the Maintenance Agreement dated October 21, 2005 between Dr. Jon Zern and Chuluota Veterinary Hospital and Seminole County is in default.

Drafts must be drawn and negotiated on or before December 21, 2007, and each draft must state that it is drawn under Irrevocable Letter of Credit No. 114 of BankFIRST dated November 23, 2005, and the amount thereof endorsed on this Letter of Credit. The Bank agrees that this Letter of Credit shall automatically renew itself for successive one-year periods unless the Bank shall give notice to you no later than forty-five (45) days preceding an expiration date that it chooses not to renew the Letter of Credit, in which case, the County shall be entitled to demand and receive the outstanding amount of money represented by this Letter of Credit. In the event a draw based on expiration of this Letter of Credit the proceeds shall be held by Seminole County as a Cash Bond to secure continued adherence to the terms of the Maintenance Agreement with Dr. Jon Zern and Chuluota Veterinary Hospital.

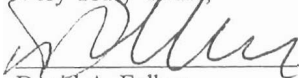
Upon tender of payment, you will release to the Bank the original Irrevocable Letter of Credit marked "Cancelled". In any event, upon expiration of the Maintenance Agreement dated October 21, 2005 and the completion of Dr. Jon Zern and Chuluota Veterinary Hospital obligations thereunder, you will return the original Letter of Credit to this Bank marked "Cancelled".

We hereby engage with drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit, that such drafts will be duly honored upon presentation to the drawee.

If the Board of County Commissioners initiates suit under this Letter of Credit, the Bank hereby agrees to be responsible for Seminole County's court costs and reasonable attorneys' fees, but BankFIRST shall not be responsible for any attorneys' fees in excess of fifteen percent (15%) of the aggregate amount of this Letter of Credit.

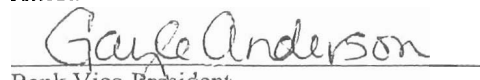
This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not, in any way, be amended by reference herein to any agreement, and any such reference shall not be deemed to incorporate herein by reference any document or agreement other than the Maintenance Agreement dated October 21, 2005, and referenced herein.

Very Truly Yours,



David A. Felker
Executive Vice President

Attest:



Bank Vice-President
(Corporate Seal)